IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

WP(C).No. 3209 of 2007(F)

PETITIONER:

SEVAGIRI RESIDENT WELFARE
SOCIETY LTD.NO.T.1794, LIC LANE,
PATTOM, THIRUVANANTHAPURAM, REPRESENTED BY
ITS SECRETARY, S. SREEKANTAN NAIR.

BY ADV. SRI.V.SURESH
SRI.G.SUDHEER

RESPONDENTS:

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1. CORPORATION OF THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY,
CORPORATINO BUILDINGS, THIRUVANANTHAPURAM.

2. S. VENKITARAMAN, S/O.THANGAMMAL,
TC 3/2194, LIC LANE, PATTOM,
THIRUVANANTHAPURAM.

R1 BY SC SRI. N.NANDAKUMARA MENON.
R2 BY ADV. SRI.A.DINESH RAO

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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WP.(C) No.3209 of 2007

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Dated this the 21st day of June, 2007

JUDGMENT

Petitioner challenges Ext.P12 notice and the direction issued for demolition in O.P. No.118 of 2006 before the Ombudsman for Local Self- Government Institutions in Kerala. Case of the petitioner is that petitioner is the first respondent in Ext.P11 application for review before the Ombudsman. It is a Society under the Co-operative Societies Act. By Ext.P12 order there is a direction to demolish the compound wall put up on the northern side of the petitioner's land. Petitioner acquired the land by Ext.P1 sale deed from the second respondent. Under Ext.P2 dated 15.9.2003 permission was granted to construct a three storied building. Construction was completed and building was assessed to tax as evident from Ext.P3 series. Petitioner also partially constructed compound wall on the northern side of the land. Notice was issued under Section 406(1) of the Municipalities Act, to which petitioner gave Ext.P4 reply. There was a suit filed by one Smt.Subbalekshmy claiming to represent the second respondent,

which was later withdrawn by Ext.P6 memo. Now the same person has filed Ext.P7 before the Ombudsman, which was closed by Ext.P8. According to the petitioner, construction was regularised by the first respondent as evidenced by Exts.P9 and P10. It was thereafter that Ext.P11 was filed for review. Of course the party respondent has a different version. According to the second respondent it is inter alia stated that there was failure on the part of the first respondent to implement the order confirming demolition. When the matter came up for hearing in the form of review, the first respondent and the petitioner sought time and the case was adjourned to 13.12.2006. A further adjournment was also granted. It is thereupon that the Secretary was directed to appear in person and he submitted that the demolition will be carried out within a week from 25.1.2007. It is then that Ext.R2(e) order was passed and in pursuance of the undertaking and Ext.R2(g) Ext.P12 notice was issued. He would also submit that the suit was withdrawn for availing other legal remedies. He relies on Ext.R2(d) order. He would also point out that no steps have been taken against the final order passed under Section 406(3), which has therefore

become final. This stand of the second respondent is shared by the first respondent also and the learned counsel Sri. N.Nandakumara Menon points out that in the suit itself in the written statement filed it is pointed out that final order under Section 406(3) was passed on 1.9.2005. Learned counsel for the Corporation on instructions points out that however the petitioner has already filed application seeking regularisation of the construction. In such circumstances, the writ petition is disposed of as follows:

There will be a direction to the Secretary of the first respondent Corporation to consider the application for regularisation filed by the petitioner with opportunity of hearing to the petitioner and the second respondent and take a decision in accordance with law on the same within a period of two months from the date of receipt of a copy of this judgment. Of course, learned counsel for the petitioner submits that the petitioner has not been served with copy of the final order. It is pointed out by the second respondent that such a contention was never raised before the Ombudsman. Till such time as a decision is taken on the application for regularisation, proceedings for demolition pursuant to

Ext.P12 shall be kept in abeyance.

(K.M. JOSEPH, JUDGE)

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